

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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VIRGIN VALLEY WATER DISTRICT,

Plaintiff,

v.

VANGUARD PIPING SYSTEMS
(CANADA), INC.; et al.,

Defendants.

2:09-cv-00309-LRH-PAL

ORDER

Before the court is defendants VG Pipe, LLC; Viega, LLC; and Viega NA, Inc.'s (collectively "defendants") motion for partial summary judgment number 7 concerning warranties. Doc. #136.¹ Plaintiff Virgin Valley Water District ("Virgin Valley") filed an opposition (Doc. #152) to which defendants replied (Doc. #164).

I. Facts and Background

Virgin Valley is a political subdivision of the State of Nevada and is responsible for the care and maintenance of underground residential water service lines in and around Mesquite, Nevada. This action arises out of Virgin Valley's allegations that the high-density water pipe used in its construction of underground water service lines was defectively designed and/or manufactured by defendants.

On February 13, 2009, Virgin Valley filed a complaint against defendants for damages

¹ Refers to the court's docket entry number.

1 resulting from the leak of defendants' manufactured polyethylene pipe. Doc. #1. On February 16,
2 2010, Virgin Valley filed an amended complaint alleging six causes of action: (1) products
3 liability; (2) strict products liability; (3) breach of implied warranty of fitness for a particular
4 purpose; (4) breach of warranty of merchantability; (5) negligence; and (6) negligent
5 misrepresentation. Doc. #79. Thereafter, defendants filed the present motion for partial summary
6 judgment as to Virgin Valley's claims for breach of the implied warranties of fitness for a
7 particular purpose and merchantability. Doc. #136.

8 **II. Legal Standard**

9 Summary judgment is appropriate only when "the pleadings, depositions, answers to
10 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
11 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter
12 of law." Fed. R. Civ. P. 56(c). In assessing a motion for summary judgment, the evidence, together
13 with all inferences that can reasonably be drawn therefrom, must be read in the light most
14 favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
15 U.S. 574, 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir.
16 2001).

17 The moving party bears the burden of informing the court of the basis for its motion, along
18 with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*,
19 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party
20 must make a showing that is "sufficient for the court to hold that no reasonable trier of fact could
21 find other than for the moving party." *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir.
22 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

23 To successfully rebut a motion for summary judgment, the non-moving party must point to
24 facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson*
25 *Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A "material fact" is a fact "that might affect the
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outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Where reasonable minds could differ on the material facts at issue, summary judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material fact is considered genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient to establish a genuine dispute; there must be evidence on which the jury could reasonably find for the plaintiff. *See id.* at 252.

III. Discussion

In their motion, defendants argue that they are entitled to summary judgment on Virgin Valley’s claims for breach of the implied warranties of fitness for a particular purpose and merchantability because there is an express limited warranty on the polyethylene pipe which specifically disclaims the implied warranties and thereby precludes Virgin Valley’s claims.

A. Warranty Disclaimer

Under the Nevada² Uniform Commercial Code (“UCC”), “there is an implied warranty that a good is merchantable and suitable for a particular purpose.” *Vacation Vill., Inc. v. Hitachi Am., Ltd.*, 874 P.2d 744, 747 (Nev. 1994) (citing NRS §§ 104.2314-2315). A manufacturer may disclaim the implied warranties of fitness for a particular purpose and merchantability only if the express warranty specifically and conspicuously mentions the implied warranties. NRS §§ 104.2315, 104.2316(3)(a); *see also, Sierra Diesel Injection Serv., Inc. v. Burroughs Corp., Inc.*, 890 F.2d 108, 113 (9th Cir. 1989) (NRS 104.2316 provides that the implied warranties may be disclaimed, modified or excluded by using appropriate and conspicuous language).

Here, the undisputed evidence establishes that there was an express limited warranty on defendants’ manufactured polyethylene pipe which specifically and conspicuously disclaims the

² Because jurisdiction in this action is based on the diversity of citizenship between the parties, the court applies the substantive law of the State of Nevada. *See Conestoga v. Servs. Corp. v. Executive Risk Indem.*, 312 F.3d 976, 980-81 (9th Cir. 2002).

1 implied warranties. Doc. #136, Exhibit B. The express limited warranty states in pertinent part:

2 THE ABOVE LIMITED WARRANTY IS IN LIEU OF ALL OTHER
3 WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED
4 TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS
FOR A PARTICULAR PURPOSE.

5 Doc. #136, Exhibit B. Virgin Valley concedes that this disclaimer satisfies the language and
6 conspicuous requirements to disclaim the implied warranties. *See* Doc. #152. Therefore, the
7 court finds that defendants have sufficiently disclaimed the implied warranties.

8 **B. Express Limited Warranty**

9 Because there is an express limited warranty that disclaims the implied warranties of
10 fitness for a particular purpose and merchantability, defendants argue that they are entitled to
11 judgment as a matter of law on Virgin Valley's related claims. *See* Doc. #136. In opposition,
12 Virgin Valley argues that summary judgment is inappropriate because neither it, nor the
13 contractors who purchased the polyethylene pipe on behalf of Virgin Valley, had knowledge
14 of the express limited warranty at the time the pipe was purchased. *See e.g., Sellman Auto,*
15 *Inc. v. McCowan*, 513 P.2d 1128, 1230 (Nev. 1973) ("Where the existence of a disclaimer is
16 unknown to the purchaser, the disclaimer is ineffective.").

17 Viewing the evidence in the light most favorable to Virgin Valley as the non-moving
18 party, the court finds that there are disputed issues of material fact relating to Virgin Valley's
19 knowledge of the express limited warranty which preclude summary judgment. William
20 Godwin, the manufacturers' sales representative for the polyethylene pipe, testified in his
21 deposition that the warranty cards containing the disclaimer are kept in the sales
22 representatives' product binders along with other product information. Doc. #136, Exhibit 2,
23 Godwin Depo., p.48-49. These product binders and warranty cards are only provided to the
24 distributors of the polyethylene pipe if such information is specifically requested by the
25 distributor. *Id.* at p.50-51. Here, there is no evidence that such information was requested by
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1 the distributors or that the product binders and accompanying warranty cards were shipped to
2 the distributor along with the distributor's product. *See Id.*

3 Additionally, there is no evidence that the contractors who purchased the pipe had
4 knowledge of the disclaimer at the time of purchase. The contractors' purchase agreements
5 and sales invoices make no mention of the express limited warranty or any warranty
6 disclaimer. *See* Doc. #136, Exhibit 5; Doc. #136, Exhibit 6. Further, there is no evidence that
7 the distributors made mention of the express limited warranty at any time during the sale of
8 the polyethylene pipe. Therefore, based on the record before the court, the court finds that
9 there are disputed issues of material fact relating to Virgin Valley's knowledge of the express
10 limited warranty which preclude summary judgment. Accordingly, the court shall deny
11 defendants' motion.

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13 IT IS THEREFORE ORDERED that defendants' partial motion for summary
14 judgment number 7 (Doc. #136) is DENIED.

15 IT IS SO ORDERED.

16 DATED this 7th day of March, 2011.



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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE